

In re) Fair Hearing No. 15,433
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Appeal of)

The petitioner appeals a decision of the Department of Social Welfare to terminate his ANFC benefits based on the lack of an eligible child in his home.

1. The petitioner has sole custody of his sixteen-year-old daughter, J., pursuant to a Court decree issued on May 15 1985. She was living in his home and attending high school in his district during the last school year. On February 20, 1998, she went to spend her school vacation week with her mother who lives in Burlington. At the end of the vacation week, J. indicated to her father that she did not want to return to his home and that she wanted to go to school in Burlington. Because she had been having trouble in school, was making unsuitable friends, and seemed bored in the petitioner's relatively small town, he agreed to let her try a new situation and finish out her school year in Burlington.

2. The petitioner was receiving ANFC at that time on behalf of his daughter. He did not report that she was not living in his home to the Department although he is generally aware that household changes must be reported

within ten days. He did not feel he had to make such a report because he still had custody of his daughter.

3. In the middle of March, 1998, J.'s mother who is disabled and lives on SSI benefits, went into the Burlington DSW office to apply for ANFC for her daughter. She explained that J. was living with her now and the eligibility specialist in Burlington agreed to "stick her neck out" and grant ANFC benefits to J.'s mother as long as she cooperated with the Department in taking action to change custody of J. to her. She agreed to do so and the benefits were started on April 1, 1998.

4. At about the same time, the petitioner's eligibility specialist in his district office called him to say that someone else (she could not say who due to confidentiality requirements) had applied for benefits for J. and that his benefits would end. He was sent a notice March 16, 1998 that he was no longer eligible for benefits as of April 1, 1998, because he had no eligible child living in his home. He appealed that termination but did not request continuing benefits.

5. The petitioner has opposed his ex-wife's motion to modify custody. A hearing was set for April 23, 1998, at which the court took no action. The matter was to have been heard again on June 12, 1998. J.'s mother indicated at the hearing in late May, that she had reconsidered her agreement to cooperate on the modification and had decided that it was

not in the interests of her child to be the subject of a legal dispute and that there was no good reason to change her custody.

6. At the time of the hearing on May 28, 1998, school was still in session and J. continued to live with her mother in Burlington. Her plans for the summer and the upcoming school year were uncertain. Her father expects that she will return to his home. Her mother candidly stated that J. does miss her father and friends and has talked about returning. On the other hand, she has also said she likes Burlington and may want to stay there. J. has not been back to her father's house since February 20. Her stay in Burlington has been positive in that J. has concentrated on her schoolwork and her grades have improved.

While she is with her mother, J.'s activities are supervised and directed by her. However, as sole legal custodian of his daughter, the petitioner continues to have the right to control and supervise his daughter and to say where she is to live. She is being supervised on a day to day basis by her mother with his permission. It appears that both parents are willing to let J. make the decision as to where she will actually live.

ORDER

The decision of the Department to terminate the petitioner's ANFC benefits is reversed.

REASONS

The Department has adopted regulations which generally require that a dependent child live with the relative who receives assistance on her behalf:

Federal and State law (section 406 of the Social Security Act; 33 VSA 2701 and 2702) require that to be eligible for public assistance (ANFC), a dependent child shall be living with a relative in a residence maintained as a home by such relative. . . .

W.A.M. 2302.1

A home is defined as the family setting maintained, or in process of being established, in which the relative or caretaker assumes responsibility for care and supervision of the child(ren). . . .

The child(ren) and relative or caretaker normally share the same household. A home shall be considered to exist, however, as long as the relative or caretaker is responsible for care and control of the child(ren) during temporary absence of either from the customary family setting.

W.A.M. 2302.13

The use of the term "temporary absence" is more fully discussed in the following regulation:

Family Separation

A recipient of ANFC assistance . . . shall notify the District Director of any physical separation of the caretaker and child(ren) which continues or is expected to continue for 30 days or more. Eligibility shall continue when the following conditions are met:

1. The recipient relative or caretaker . . . continues or supervises continuing care and supervision of eligible child(ren); and
2. A home is maintained for the child(ren) or for return of the recipient relative or caretaker within six months; and
3. Eligible family members have continuing financial need.

W.A.M. 2224

The above regulations contemplate that the absence of a child from the household triggers a review of the situation to see whether the parent is continuing to exercise control over the absent child and to determine whether the child is expected to return to her home within six months. Although the petitioner did not bring her absence to the Department's attention, the Department did find out that the child was living with the mother even before she had been gone for thirty days.

At that point, it was incumbent upon the worker to establish some facts, not to cut the petitioner off because someone else had been given an ANFC grant to support the child. There is absolutely no support for that action in the regulations. If a review had been conducted in March, the worker would have discovered that the father still had sole custody and control over the child, that she was with her mother with his permission, and that he expected the child to return to his home by the end of the school year. The latter event was well within the six month return

period. It must be concluded that the petitioner should have continued to receive benefits for the child. The decision to terminate his benefits was erroneous.

The Department may want to review the situation again now that the school year has ended. If the petitioner cannot provide a reasonable assurance that his daughter will return to his home by the end of August, 1998, then the Department may be justified in terminating his benefits.

This decision makes no ruling on the correctness of the Department's payment of the child's mother. No action has been taken against her and no appeal has been filed by her.

The mother appeared at this hearing as a subpoenaed witness, not as an appellant. The decision here is only that the Department's decision to terminate the petitioner's benefits is incorrect.

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